



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE September 16, 2019

TO Members, Joint Corporations, Elections & Political Subdivisions Interim Committee

FROM Anna Mumford, LSO

SUBJECT 20LSO-0026 – Voter fraud prevention.

20LSO-0026 requires "acceptable identification" for registering to vote and for voting. The bill draft defines "acceptable identification" to mean "a current, valid photo identification and may also include "one (1) of the identification documents or other proof of identity as specified by rule of the secretary of state as adequate proof of the identity of a voter." The definition of "acceptable identification" in the Secretary of State's current rules is attached to this memo. Briefly, this identification may be either: (1) one of the listed identifications issued by a federal, state, tribal or local government or agency thereof; or (2) any two or more of a certificate of U.S. citizenship or naturalization, military draft record, voter registration card, social security card, birth certificate or any other form of identification issued by an official U.S. or Wyoming agency.

It is possible that the bill if enacted may be challenged as violating the Federal and State constitutions and federal law. First, it is possible the bill may be challenged under the Fourteenth Amendment to the United States Constitution as a violation of the Equal Protection Clause by substantially burdening the right to vote.¹ The United States Supreme Court in 2008 upheld a photo-identification law in Indiana, concluding that a requirement to present photo identification before voting on election day or in person at a clerk's office before election day was sufficiently justified by the state's "valid interest in protecting the integrity and reliability of the electoral process."²

At least one federal circuit court has found a photo-identification law to violate the Fourteenth Amendment after considering the legislative history behind the enactment of the law and the law in its entirety.³ In 2013, North Carolina enacted a law that implemented photo identification, reduced the number of days for early voting, eliminated same-day registration and eliminated preregistration, among other things, which the Fourth Circuit found was enacted with racially discriminatory intent in violation of the Fourteenth Amendment.⁴ Because this bill draft is narrower than North Carolina's law, it is unclear how a court would analyze an equal-protection challenge under the 2008 Supreme Court case today.

¹ See U.S. Const. amend. XIV (stating that no state shall "deny to any person within its jurisdiction the equal protection of laws").

² *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 204 (2008) (citations omitted).

³ See *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

⁴ *Id.* at 235–42.

Second, it is possible the bill draft may be challenged as violating the federal Voting Rights Act. Plaintiffs raising a challenge under this law would have to prove that, based on the totality of the circumstances, the law makes the political process "not equally open to participation" to a racial minority "in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."⁵ The Fourth Circuit found that North Carolina's comprehensive voting law (discussed above) violated the Voting Rights Act.⁶

Finally, it is possible that this bill might be challenged under the Wyoming Constitution. Article 6, Section 2 provides that "Every citizen of the United States of the age of twenty-one years and upwards, who has resided in the state or territory one year and in the county wherein such residence is located sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided."⁷ Another provision provides that no person qualified to be an elector in Wyoming "shall be allowed to vote . . . until he or she shall have registered as a voter according to law."⁸ It is unclear how a Wyoming court would resolve a challenge to a photo-identification law under the Wyoming Constitution. Other state courts have upheld or struck down similar laws based on their state constitutions.⁹

This memo is a brief overview of potential issues that may arise with this bill draft. LSO cannot predict how a court would rule on the legality of this bill if enacted. Please let me know if you have any questions.

⁵ 52 U.S.C. § 10301(b).

⁶ McCrorry, 831 F.3d at 235–42.

⁷ Wyo. Const. art. 6, § 2.

⁸ Wyo. Const. art. 6, § 12.

⁹ Milwaukee Branch of NAACP v. Walker, 851 N.W.2d 262 (Wis. 2014) (upholding a photo-identification law on grounds that it was not an undue burden on the right to vote); Weinschenk v. State, 203 S.W.3d 201 (Mo. 2006) (finding a photo-identification law violated Missouri's equal protection clause and the guarantee of the right to vote).

Secretary of State

Election Procedures

Chapter 2: Identification for Election Purposes

Effective Date: 10/22/2013 to Current

Rule Type: Current Rules & Regulations

Reference Number: 002.0005.2.10222013

Wyoming Secretary of State 
Rules for Identification for Election Purposes

CHAPTER 2

Section 1. Authority.

These rules are necessitated by Section 303 of the Help America Vote Act of 2002 [hereafter referred to as HAVA], P.L. 107-252, and are authorized by W.S. 22-1-102(a)(xxxix) and 22-2-121(b) and (d).

Section 2. Purpose.

These rules are promulgated to assist State and local Wyoming election officials and employees in implementing the identification requirements for voters when they apply to register, for certain voters when they vote, and for voters who are challenged at the polls.

Section 3. Applicability.

These rules shall apply to all State and local election officials, employees, and election judges by whatever designation involved in the conduct of the activities addressed and to all voters and prospective voters.

Section 4. Verification of Voter Information.

The County Clerk shall verify the voter information as provided in W.S. 22-3-104(f), using the statewide voter registration system. If the required information is found to be valid and sufficient for registration, the individual shall be registered.

Section 5. Content of Voter Registration Application and of Oath Form.

(a) The voter registration oath shall conform in substance to the voter registration oath in W.S. 22-3-103 although it may vary in other respects. The statewide voter registration application form is prescribed by the Secretary of State and can be found online.

Section 6. Definition of “Acceptable Identification.”

(a) Any one of the following documents shall constitute proof of the individual’s identity for the purpose of registering to vote and for voting. If the individual’s current residence address is included in the document, it shall also constitute proof of residency, if necessary. In the event of a challenge, if the residence address is not included in the document or if it is not current, the individual may be required to produce

other documentation of his residence address in accordance with W.S. 22-3-118 or 22-15-101 through 109.

- (i) United States Passport;
- (ii) Driver's License or Identification Card issued by any State or Outlying Possession of the United States;
- (iii) Identification Card issued by the Federal Government, any State or Local Government, or an Agency thereof;
- (iv) Photo Identification Card issued by the University of Wyoming, a Wyoming Community College, or a Wyoming Public School;
- (v) United States Military Card;
- (vi) Identification Card issued to a Dependent of a member of the United States Armed Forces.

(b) Any two or more of the following documents together shall constitute proof of the individual's identity and residency, if necessary, for the purpose of registering to vote and for voting. In the event of a challenge, if the residence address is not included in the document or if it is not current, the individual may be required to produce other documentation of his residence address in accordance with W.S. 22-3-118 or 22-15-101 through 109.

- (i) Certification of United States Citizenship;
- (ii) Certificate of Naturalization;
- (iii) United States Military Draft Record;
- (iv) Voter's Registration Card from another State or County;
- (v) United States Social Security Card;
- (vi) Certification of Birth Abroad issued by the Department of State;
- (vii) Original or certified copy of a birth certificate bearing an official seal; and
- (viii) Any other form of identification issued by an official agency of the United States or a State.

(c) In the event of a challenge, the following documents, showing the individual's name and address, are acceptable proof of identity and residency:

- (i) Current utility bill;
- (ii) Current bank statement;
- (iii) Current government check;
- (iv) Current paycheck;
- (v) Any other current government document showing his name and address.